

692
No. 2023

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON and JOHN M. QUAILE, Partners Doing Business as MEYER, WILSON & COMPANY,

Plaintiffs in Error,

vs.

EVERETT PULP & PAPER COMPANY,

Defendant in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States Circuit Court
for the Western District of Washington,
Northern Division.

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Court of Appeals
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No. 2023

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FOR THE NINTH CIRCUIT.

H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E.
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In the Circuit Court of the United States for the Western District of Washington, Northern Division.

H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON and JOHN M. QUAILE, partners doing business as MEYER, WILSON & COMPANY,

Plaintiffs in Error.

vs.

EVERETT PULP & PAPER COMPANY,

Defendant in Error.

No. 1641.

NAMES AND ADDRESSES OF COUNSEL.

GEORGE H. WILLIAMS, Esq.,
Spalding Building, Portland, Oregon.

CHARLES E. S. WOOD, Esq.,
Spalding Building, Portland, Oregon.

STEWART B. LINTHICUM, Esq.,
Spalding Building, Portland, Oregon.

ISAAC D. HUNT, Esq.,
Spalding Building, Portland, Oregon.

WILLIAM A. PETERS, Esq.,
New York Building, Seattle, Washington.

J. H. POWELL, Esq.,
New York Building, Seattle, Washington.
Attorneys for Plaintiffs in Error.

F. H. BROWNELL, Esq.,
Everett, Washington.
J. A. COLEMAN, Esq.,
Everett, Washington.
Attorneys for Defendant in Error.

*In the Circuit Court of the United States for the Western
District of Washington, Northern Division.*

<p>H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON and JOHN M. QUAILE, partners do- ing business as MEYER, WILSON & COMPANY,</p>	}	No. 1641.
<i>Plaintiffs,</i>		
vs.		
<p>EVERETT PULP & PAPER COM- PANY,</p>	}	
<i>Defendant.</i>		

The above named plaintiffs, for cause of action against the above named defendant, allege as follows:

I.

At all the times hereinafter set forth the plaintiffs, H. L. E. Meyer, George H. C. Meyer and H. L. E. Meyer, Jr., were and still are citizens of the State of California, and residents and inhabitants thereof; and plaintiffs, John Wedderburn Wilson and John M. Quaile were and still are subjects of his Majesty, the King of Great Britain and Ireland, and were and still are citizens of the Kingdom of Great Britain and Ireland and residents and inhabitants thereof; and all of the plaintiffs were and still are partners doing business as Meyer, Wilson & Company.

II.

At all the times hereinafter set forth the defendant, Everett Pulp & Paper Company, was and still is a corporation organized and existing under and by virtue of the laws of the State of Washington, and at all of such times said defendant was

and still is a citizen of the State of Washington and a resident and inhabitant thereof.

III.

The amount in controversy herein, exclusive of interest and costs, exceeds the sum of two thousand dollars (\$2,000), and is, to-wit, the sum of six thousand two hundred and seventy-two dollars.

IV.

Heretofore, and on the 15th day of October, 1906, plaintiffs and defendant entered into a certain contract in writing wherein and whereby the plaintiffs agreed to sell to the defendant, and the defendant agreed to purchase from the plaintiffs, about three hundred (300) to four hundred (400) tons of twenty-two hundred and forty (2240) pounds each of China clay in casks, of the brand known as the P. X. Y. brand, at the rate of seventy (70) cents per one hundred (100) pounds, net invoice weight, ex ship at Seattle, Washington.

Such sale was made for shipment per the ship Mozambique from Leith, Scotland, or Tyne, England, to Seattle. Delivery was to be taken by the purchaser from alongside the vessel at once on discharge at Seattle, Washington; such clay to be at the risk of purchasers, and wharfage, if any, at Seattle, Washington, to be for the account of the purchaser.

Pursuant to said contract, the plaintiffs delivered on board the said ship Mozambique at Newcastle-on-the-Tyne, England, sixteen hundred (1600) casks of China clay of the P. X. Y. brand, the gross weight of which was four hundred and twenty-five tons, containing nine hundred and fifty-two thousand (952,000) pounds, and the tare on which barrels was twenty-five tons, containing fifty-six thousand (56,000) pounds, making the total net weight four hundred (400) tons, containing eight hundred and ninety-six thousand (896,000) pounds; all as shown by the invoice weights thereof as paid for by plaintiffs to the sellers to them of such clay.

Thereafter said ship Mozambique sailed upon her voyage

from Newcastle-on-the-Tyne to Seattle, and thereafter, and prior to the 12th day of October, 1907, discharged at the dock of Galbraith-Bacon Company at Seattle, Washington, said China clay so shipped as aforesaid; and the defendant, pursuant to said contract, took delivery of said clay from alongside said ship and ex said ship at Seattle, Washington.

The contract price for said clay, so sold and delivered by plaintiffs to defendant, was the sum of sixty-two hundred and seventy-two dollars (\$6272), no part of which has been paid, although long past due and payable. The terms of said sale were cash ex ship at Seattle, demand has been made by plaintiffs upon the defendant for the payment of said amount, but it refuses to pay the same or any part thereof.

Wherefore, plaintiffs demand judgment against the defendant for the sum of sixty-two hundred and seventy-two dollars (\$6272), with interest thereon, from the 12th day of October, 1907, at the rate of six per cent per annum, and for their costs and disbursements herein.

WILLIAMS, WOOD & LINTHICUM,
PETERS & POWELL,

Attorneys for Plaintiffs.

United States of America,
Western District of Washington.—ss.

I, Alfred Tucker, being duly sworn, on oath say I am the Northwest manager of the plaintiffs above named; I know the contents of the foregoing complaint, and it is true as I verily believe.

ALFRED TUCKER.

Subscribed and sworn to before me this 20th day of January, 1908.

(Seal)

JOHN H. POWELL,

Notary Public for Washington, residing at Seattle.

Indorsed: Complaint. Filed Jan. 20, 1908. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*United States Circuit Court for the Western District of
Washington.*

H. L. E. MEYER, et al.

vs.

EVERETT PULP & PAPER COM-
PANY.

} No. 1641.

APPEARANCE.

To the Clerk of the above Entitled Court:

You will please enter our appearance as attorneys for plain-
tiffs in the above entitled cause. Service of all subsequent
papers, except writs and process, may be made upon said plain-
tiffs by leaving the same with Peters & Powell, office address
546-549 New York Bldg., Seattle, Wash.

Indorsed: Appearance. Filed in the U. S. Circuit Court
Western Dist. of Washington, Jan. 20, 1908. A. Reeves Ayres,
Clerk. A. N. Moore, Deputy.

*United States Circuit Court for the Western District of
Washington.*

MEYER, WILSON & COMPANY,

vs.

EVERETT PULP & PAPER CO.

} No. 1641.

APPEARANCE.

To the Clerk of the above Entitled Court:

You will please enter our appearance as attorneys for the
defendant, Everett Pulp & Paper Company, in the above entitled
cause. Service of all subsequent papers, except writs and
process, may be made upon said Everett Pulp & Paper Com-
pany, by leaving the same with Brownell & Coleman, office ad-
dress, Everett, Washington.

Indorsed: Appearance. Filed in the U. S. Circuit Court,
Western Dist. of Washington, Feb. 15, 1908. A. Reeves Ayres,
Clerk. W. D. Covington, Deputy.

In the Circuit Court of the United States, for the Western District of Washington, Northern Division.

H. L. E. MEYER, GEORGE H. C.
MEYER, H. L. E. MEYER, JR.,
JOHN WEDDERBURN WILSON
and JOHN M. QUAILE, partners do-
ing business as MEYER, WILSON &
COMPANY,

Plaintiffs,

vs.

EVERETT PULP & PAPER COM-
PANY,

Defendant.

No. 1641.

ANSWER.

Comes now the above named defendant, and answering the complaint herein says:

I.

This defendant has no sufficient knowledge or information to form a belief as to the truth of the allegations of the first paragraph of the complaint, and therefore denies each and every allegation thereof.

II.

This defendant admits the allegations of the second paragraph of the complaint, and alleges that it has paid its annual license fee due to the State of Washington.

III.

This defendant admits that the amount in controversy herein exceeds the sum of two thousand dollars (\$2000.00) but denies that it equals the sum of six thousand two hundred seventy-two dollars (\$6272.00).

IV.

Referring to the fourth paragraph of the complaint, this defendant denies that said contract was entered into on the 15th day of October, 1906, and alleges that said contract was entered into on the 11th day of October, 1906, and confirmed on the 15th day of October, 1906. This defendant denies that the plaintiffs delivered or discharged at the dock of Galbraith-Bacon & Company at Seattle, Washington, sixteen hundred (1600) casks of China clay of the P. X. Y. brand, and denies that the China clay of the said brand so delivered at the said wharf, contained eight hundred and ninety-six thousand (896,000) pounds, and denies that this defendant took delivery of said clay from alongside said ship and ex said ship at Seattle, Washington.

V.

This defendant denies that the clay so sold and delivered by the plaintiffs to defendant was of the contract price of sixty-two hundred and seventy-two (\$6272.00) dollars or any sum in excess of three thousand three hundred and seventy-five and 12-100 (\$3375.12) dollars.

And further answering the complaint, and by way of an affirmative defense, this defendant alleges:

I.

That on or about the 11th day of October, this defendant ordered of the plaintiffs from three hundred (300) to four hundred (400) tons of P. X. Y. China clay, to be fully equal to sample which had been theretofore submitted by the plaintiffs to the defendant at the contract price of seventy (\$.70) cents per one hundred (100) pounds, ex ship at Seattle, Washington, duty paid. Said order was accepted by the plaintiffs on or about the 15th day of October, 1906, and thereafter the defendant, in the month of October, 1907, delivered on the wharf of Galbraith-Bacon & Company at Seattle, Washington, sixteen hundred (1600) casks of alleged China clay. It is not customary in the clay trade to inspect casks on board the dock

in Seattle, because of the expense and inconvenience, and pursuant to the custom existing in the trade, the said clay was forwarded to the factory or plant of the defendant at Everett, Washington, where upon an inspection it was found that of the said clay eight hundred and sixty-one (861) casks conformed to sample submitted of P. X. Y. brand, and that seven hundred and thirty-nine (739) casks were of an entirely different brand, the markings of which were almost identical with the good brand and not easily distinguishable therefrom, and that said different brand of seven hundred and thirty-nine (739) casks was far inferior to the sample submitted by the plaintiffs, and upon which the contract was based.

II.

Immediately on the discovery that there was included in the said shipment of clay casks of said different brand, and of the inferior quality, this defendant notified the plaintiffs thereof and refused to accept the shipment.

III.

At the time the defendant discovered that the plaintiffs had included in the shipment clay of a grade inferior to sample, there were still remaining on the dock of Galbraith-Bacon & Company at Seattle, Washington, two hundred and fifty-three (253) casks. This defendant promptly notified the plaintiffs that the shipment was not in accordance with sample, and after some correspondence, it was agreed between the parties that the defendant should take to its plant at Everett the remaining two hundred and fifty-three (253) casks without admission of liability for the shipment and without expense to it if defendant's claim as to the inferiority of the clay should be proved correct.

IV.

That of the two hundred and fifty-three (253) casks shipped to Everett under the agreement described in paragraph III hereof, one hundred and thirty-three (133) casks were of the

poorer brand, inferior to sample, and are now, and at all times have been held by this defendant as the property of the plaintiffs and subject to their orders, together with the six hundred and six (606) casks inferior to sample also in the hands of this defendant.

V.

That this defendant has offered, and has at all times been, and now is ready and willing to return the said six hundred and six (606) casks inferior to sample, to the wharf in the said City of Seattle, where the same were first unloaded, without expense to the plaintiffs, and here and now offers so to do, but that the plaintiffs have at all times been unwilling to receive the same and have refused to reaccept the same or any portion thereof.

VI.

That the value of the eight hundred and sixty-one (861) casks of P. X. Y. clay like the sample is three thousand three hundred and seventy-five and 12-100 (\$3375.12) dollars, and the interest thereon from October 12th, 1907, to date of this answer is the sum of fifty and 63-100 (\$50.63) dollars. Defendant herewith brings into the Registry of this Court the amount due therefor, to-wit: the sum of thirty-four hundred twenty-five and 75-100 (\$3425.75) dollars.

Wherefore defendant prays that the plaintiffs recover no judgment herein, and that this action be dismissed without further costs to this defendant.

BROWNELL & COLEMAN,

Attorneys for Defendant,

Everett, Washington.

State of Washington,
County of Snohomish.—ss.

Wm. Howarth, being first duly sworn, according to law, deposes and says that he is the Treasurer of the Everett Pulp & Paper Company, the defendant named in the foregoing answer;

that he has read the same, knows the contents thereof, and that he believes the same to be true.

WM. HOWARTH,

Subscribed and sworn to before me this 12th day of February, 1908.

(Seal)

F. H. BROWNELL,

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

Indorsed: Answer. Filed in the U. S. Circuit Court, Western Dist. of Washington, Feb. 15, 1908. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON and JOHN M. QUAILE, partners doing business as MEYER, WILSON & COMPANY,

Plaintiffs,

vs.

EVERETT PULP & PAPER COMPANY,

Defendant.

No. 1641.

REPLY.

Plaintiffs, replying to the further answer and affirmative defense of the defendant, allege and deny as follows:

I.

For reply to paragraph I of the further answer and affirmative defense of the defendant, plaintiffs admit that on or about

the 11th day of October, 1906, they contracted to deliver to the defendant from three hundred (300) to four hundred (400) tons of P. X. Y. China clay of quality equal to sample therefore submitted by them to the defendant, at the contract price of seventy cents (70) per one hundred (100) pounds ex ship at Seattle, Washington, duty paid; and that thereafter, and in the month of October, 1907, they delivered on the wharf of Galbraith-Bacon & Company at Seattle, sixteen hundred (1600) casks of clay; but they deny that a portion of the clay so delivered did not conform to sample; and deny that seven hundred thirty-nine (739) casks thereof, or any casks thereof, were far or at all inferior to the sample submitted by them to the defendant; and they deny that it is not customary in the clay trade to inspect casks on board the dock in Seattle; and they deny that any expense or inconvenience would be occasioned by inspection at Seattle; and they deny that the custom alleged in said paragraph exists; and they deny that pursuant to said alleged custom said clay was forwarded to the factory or plant of the defendant at Everett, Washington; but, on the contrary, they allege that said clay was forwarded by the defendant to Everett, Washington, because it had taken delivery of said clay pursuant to said contract on dock at Seattle, Washington, and that said clay so forwarded was the property of the defendant and so forwarded at the defendant's risk and the defendant's expense.

II.

For reply unto paragraph II of the further answer and affirmative defense of the defendant, plaintiffs deny the same and each and every allegation therein contained.

III.

For reply to paragraph III of the further answer and affirmative defense of the defendant, plaintiffs deny the same and each and every allegation therein contained.

IV.

For reply unto paragraph IV of the further answer and affirmative defense of the defendant, plaintiffs deny the same and each and every allegation therein contained.

V.

For reply unto paragraph V of the further answer and affirmative defense of the defendant, plaintiffs deny the same and each and every allegation therein contained, save and except they admit that they refused to permit the defendant to return to them any portion of the clay sold and delivered by them to the defendant.

VI.

For reply unto paragraph VI of the further answer and affirmative defense of the defendant, plaintiffs deny that eight hundred sixty-one (861) casks of the clay so sold and delivered by them to defendant is alone equal to sample; but on the contrary, they allege that all of the clay delivered by them to the defendant on the wharf of Galbraith-Bacon & Company at Seattle, Washington, is equal to sample; and they deny that interest on the money, which by said paragraph defendant alleges it has paid into court, from October 12, 1907, to the date of said answer, is the sum of fifty dollars and sixty-three cents (\$50.63); but, on the contrary, they allege that interest upon said amount is at the rate of nine per cent per annum, the same being the contract and agreement of the parties.

Wherefore, plaintiffs demand judgment in accordance with the prayer of their complaint.

PETERS & POWELL,
WILLIAMS, WOOD & LINTHICUM,
Attorneys for Plaintiffs.

United States of America,
State and District of Oregon.—ss.

I, Alfred Tucker, being duly sworn, on oath say I am the Northwest manager of the plaintiffs above named, and the foregoing reply is true as I verily believe.

ALFRED TUCKER.

Subscribed and sworn to before me this 26th day of February,
1908.

(Seal)

J. G. FLANDERS,
Notary Public for Oregon.

Service hereof admitted Feb. 28, 1908.

BROWNELL & COLEMAN,
Attys. for Deft.

Indorsed: Reply. Filed U. S. Circuit Court, Western District of Washington, Nov. 1, 1910. A. Reeves Ayres, Clerk. R. M. Hopkins, Deputy.

*In the Circuit Court of the United States for the Western
District of Washington, Northern Division.*

H. L. E. MEYER, GEORGE H. C.
MEYER, H. L. E. MEYER, JR.,
JOHN WEDDERBURN WILSON
and JOHN M. QUAILE, partners do-
ing business as MEYER, WILSON &
CO.

Plaintiffs,

vs.

EVERETT PULP & PAPER CO.,

Defendant.

No. 1641.

MOTION.

Come now the above named plaintiffs by Williams, Wood & Linthicum, Isaac D. Hunt and Peters & Powell, their attorneys, and moves this Honorable Court for leave to file an Amended Reply in the above and within entitled cause, and for reason why same should be granted, refers to the affidavit filed herein, a copy of which is attached hereto.

WILLIAMS, WOOD & LINTHICUM,
ISAAC D. HUNT,
PETERS & POWELL,

Attorneys for Plaintiffs.

*In the United States Circuit Court for the Western District of
Washington, Northern Division.*

<p>H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON and JOHN M. QUAILE, partners do- ing business as MEYER, WILSON & CO.,</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">vs.</p> <p>EVERETT PULP & PAPER CO.,</p> <p style="text-align: right;"><i>Defendant.</i></p>	}	No.1641.
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AFFIDAVIT.

United States of America,
Western District of Washington, Northern Division.—ss.

Isaac D. Hunt being first duly sworn, upon my oath do depose and say :

That I am one of the attorneys for the above and within named plaintiffs and that I make this affidavit having knowledge of the facts herein stated; that at the time the Reply in the above entitled cause was filed in this Honorable Court J. Couch Flanders, one of the members of the firm of Williams, Wood & Linthicum, was on his death-bed, but being reluctant to give up his active grasp upon the legal affairs of his office he drew the reply now on file in this Honorable Court without being thoroughly aware and familiar with the facts to be therein embraced; that your affiant has now been associated with Counsel for the plaintiff in the above entitled cause and asserts that in his belief the ends of justice would be furthered and served if the above and within named plaintiffs are allowed

to serve and file the Amended Reply which is attached hereto and made a part hereof for the inspection of this Honorable Court; that certain facts have arisen subsequent to the filing of the said Reply and such new facts are alleged and set out in the Amended Reply, hereto attached for the inspection of this Honorable Court, and which counsel desires to file in lieu thereof.

ISAAC D. HUNT,

Subscribed and sworn to before me this 28th day of October, 1910.

(Seal)

JOHN J. JAMISON,
Notary Public in and for the State of Washington, residing
at Seattle.

Service of within Motion and receipt of copy thereof admitted this 29th day of October, 1910.

F. H. BROWNELL,
For Defendant.

Indorsed: Motion for leave to File Amended Reply. Filed U. S. Circuit Court, Western District of Washington, Nov. 1, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

*In the Circuit Court of the United States for the Western
District of Washington, Northern Division.*

<p>H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON and JOHN M. QUAILE, partners do- ing business as MEYER, WILSON & & COMPANY,</p>	}	No. 1641.
vs.		
<p>EVERETT PULP & PAPER COM- PANY,</p>	}	
<i>Plaintiffs,</i>		
<i>Defendant.</i>		

ORDER ALLOWING AMENDED REPLY TO ANSWER.

Now on this day this cause comes on for hearing upon motion of plaintiffs for leave to amend reply; the Court after hearing argument of respective counsel grants said motion. To all of which defendant excepted; said exception being allowed.

Indorsed: Order allowing amended reply. Entered United States Circuit Court, Western District of Washington, General Order Book No. 3, page 71, November 7, 1910.

*In the Circuit Court of the United States for the Western
District of Washington, Northern Division.*

<p>H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON and JOHN M. QUAILE, partners do- ing business as MEYER, WILSON & CO.,</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">vs.</p> <p>EVERETT PULP & PAPER CO.,</p> <p style="text-align: right;"><i>Defendant.</i></p>	}	<p>No. 1641.</p>
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AMENDED REPLY.

Come now the above named plaintiffs and by leave of Court first had and obtained file this their Amended Reply to the further answer and affirmative defense of the defendant and deny and allege as follows:

I.

For reply to paragraph I of the further answer and affirmative defense of the defendant, plaintiffs admit that on or about the 11th day of October, 1906, they contracted to deliver to the defendant from 300 to 400 tons of P. X. Y. China clay of a quality equal to sample theretofore submitted by them to the defendant, at the contract price of 70 cents per 100 lbs. ex ship at Seattle, Washington, duty paid, and that thereafter and in the month of October, 1907, they delivered on the wharf of Galbraith-Bacon & Co. at Seattle 1600 casks of clay, but they deny that a portion of the clay so delivered did not conform to sample, and deny that 739 casks thereof or any casks thereof, were far, or at all, inferior to the sample submitted by them to the defendant, and they deny that it is not customary in the

clay trade to inspect casks on board the dock in Seattle, and they deny that any expense or inconvenience would be occasioned by inspection at Seattle, and they deny that the custom alleged in said paragraph exists, and they deny that pursuant to said alleged custom said clay was forwarded to the factory or plant of defendant, at Everett, Washington, but on the contrary, they allege that said clay was forwarded by the defendant to Everett, Washington, because it had taken delivery of said clay pursuant to said contract, on dock at Seattle, Washington, and that said clay so forwarded was the property of the defendant and so forwarded at defendant's risk and defendant's expense.

II.

For reply to paragraph II of the further answer and affirmative defense of the defendant, plaintiffs deny the same and each and every allegation therein contained.

III.

For reply to paragraph III of the further answer and affirmative defense of defendant, plaintiffs deny the same and each and every allegation therein contained.

IV.

For reply to paragraph IV of the further answer and affirmative defense of defendant, plaintiffs deny the same and each and every allegation therein contained.

V.

For reply to paragraph V of the further answer and affirmative defense of defendant, plaintiffs deny the same and each and every allegation therein contained, save and except they admit that they refused to permit defendant to return to them any portion of the clay sold and delivered by them to the defendant.

VI.

For reply to paragraph VI of the further answer and affirmative defense of defendant, plaintiffs deny that 861 casks of the clay so sold and delivered by them to defendant are alone equal to sample, but on the contrary they allege that all the clay delivered by them to defendant on the wharf of Galbraith-Bacon & Co. at Seattle, Washington, is equal to sample and they deny that interest on the money which by said paragraph defendant alleges it has paid into Court, from October 12, 1907, to the date of said answer is the sum of \$50.63, but on the contrary they allege that the interest upon said amount is at the rate of nine (9) per cent per annum, the same being the contract price and agreement of the parties.

Further replying to the further answer and affirmative defense of the defendant herein, plaintiffs allege as follows:

That the clay which the defendant pretended to reject was accepted and taken by said defendant to its manufacturing plant at Everett, Washington, and there stored by it; that the said casks of clay pretended to be rejected were placed in the open, upon the bank of a river, without any shelter or covering over the same and the defendant allowed and suffered the said clay, and now allows and suffers the same to remain in the open air without shelter or cover, exposed to the action of the wind, sun, dust, rain and snow, and further that floods occurring in the river on the banks of which the said clay had been placed, overflowed the said clay and greatly deteriorated and depreciated its value; that the said clay was not in condition to be returned to the plaintiffs herein and the same was not in the condition that it was when delivered to the defendant; that the said clay now is worthless and of no value whatsoever, the decrease and loss of value being due to the defendant's carelessness and negligence in not properly storing the clay and reasonably protecting it from the elements which so greatly damaged it.

Wherefore plaintiffs demand judgment in accordance with the prayer of their complaint.

WILLIAMS, WOOD & LINTHICUM,
ISAAC D. HUNT,
PETERS & POWELL,

Attorneys for Plaintiffs.

United States of America,
Western District of Washington, Northern Division.—ss.

I, Alfred Tucker, being duly sworn, on oath say: I am the Northwest manager of the plaintiffs above named, and the foregoing Reply is true as I verily believe.

ALFRED TUCKER.

Subscribed and sworn to before me this 28th day of October, 1910.

(Seal)

JOHN J. JAMISON,
Notary Public in and for the State of Washington, residing
at Seattle.

Service of within Amended Reply and receipt of copy thereof admitted this 29th day of October, 1910.

F. H. BROWNELL,
For Defendant.

Indorsed: Amended Reply. Filed U. S. Circuit Court, Western District of Washington, Nov. 7, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

*United States Circuit Court, Western District of Washington,
Northern Division.*

MEYER, WILSON & COMPANY,

Plaintiffs,

vs.

EVERETT PULP & PAPER COM-
PANY,

Defendant.

No. 1641.

Filed Jan. 26. 1911.

Action at law to collect the contract price of China clay delivered pursuant to an executory contract for sale by sample. Jury waived. Trial by the Court and findings for the defendant on the ground of a breach of an implied warranty of quality.

WILLIAMS, WOOD & LINTHICUM,
ISAAC D. HUNT,
PETERS & POWELL,

For Plaintiffs.

F. H. BROWNELL,

For Defendant.

HANFORD, District Judge.

This is an action at law, tried by the Court, a jury trial having been waived. The action is to collect the price of 400 tons of China clay sold and delivered by the plaintiffs to the defendant. The contract for the sale of the clay was made by correspondence between the parties and as construed by the Court, it is a contract for a sale by sample, and there is an implied warranty of quality corresponding to the sample referred to in the correspondence. 15 Am. & Eng. Enc. of Law (2nd Ed.) pp. 1225-6. The clay was bought in England and transported by ship to Seattle, and there is no dispute between

the parties, as to the quantity of the clay shipped and delivered, nor as to the contract price which the defendant promised to pay therefor. It is admitted also that payment of the purchase price has been demanded and refused, except as to part, and other jurisdictional facts are admitted. The contract, as construed by the Court, obligated the defendant to receive the clay from the ship, which condition precluded inspection by the purchaser before delivery. This is so for the reason that, clay to be of the quality warranted, must be of uniform white color and free from grit, and to determine the quality, time, favorable conditions, and special conveniences for testing are necessary, and these essentials make a fair inspection while the ship is being discharged, impracticable. The defendant did not in fact inspect the clay to ascertain its quality before receiving it, but afterwards ascertained that it came from two different sources of supply and that it is not uniform in quality, 800 barrels thereof being inferior to the sample and unsuitable for the defendant's use. The defendant used and has tendered payment at the contract rate for 861 barrels, and disputes its liability to pay for 800 barrels because of the inferior quality thereof. The plaintiffs' contention is that notwithstanding the inferior quality of 800 barrels of the clay, the defendant accepted delivery of the entire consignment and by doing so waived its right to reject any part of the same. The defendant did not intend a waiver of its right to have delivered that which it had agreed to buy and pay for, viz: Clay of the same quality as the sample. On the contrary, it was prompt in giving notice to the plaintiffs of the inferior quality of the clay, and has acted fairly towards them in minimizing the loss by making use of, and tendering payment for, all of the clay fit for use and by holding the rejected portion subject to the plaintiff's right to dispose of it. The plaintiff's contention is founded upon the false idea that, the defendant was legally bound to either accept the commodity of which delivery was tendered, and pay the contract price for all of it, regardless of its quality, or else refuse to receive possession of it. This idea is contrary to the

rule of law applicable to the case, because, it ignores the implied warranty upon which the defendant had a right to rely. The defendant acted within its legal rights in taking possession of the clay and resisting the plaintiffs' demand for the price of the portion inferior to the sample. In this country the rule is well established by numerous decisions of the courts, that a breach of an implied warranty of quality entitles the vendee to retain the goods and when sued for the purchase price, to set up the breach of warranty to reduce the sum recoverable by the vendor. 15 Am. & Eng. Enc. of Law (2nd Ed.) p. 1255; 24 Id. p. 1158; *Saunders v. Short*, 86 Fed. Rep. 225; *Andrews v. Schreiber*, 93 Fed. Rep. 367; *Florence Oil & Refining Co. v. Farrar*, 109 Fed. Rep. 254. The measure of damages which the vendee may claim for breach of an implied warranty of quality is the difference between the actual value of the property delivered and the higher value of the warranted quality; and if there is no other evidence of value, the price agreed to be paid will be regarded as the value of the property of the quality warranted. In this case the defendant having offered to return the inferior clay and to hold it subject to disposition by the plaintiffs, the contract price is the measure of damages which it is entitled to recoup.

The Court directs that findings be prepared in accordance with this opinion and the judgment to be entered, will be that the plaintiffs take nothing, save and except the amount of money deposited in the registry of the court by the defendant, and that the defendant recover the taxable costs occasioned by the litigation subsequent to the making of said deposit.

C. H. HANFORD, Judge.

Indorsed: Opinion. Filed U. S. Circuit Court, Western District of Washington, Jan. 26, 1911. Sam'l D. Bridges, Clerk. W. D. Covington, Deputy.

*In the Circuit Court of the United States, for the Western
District of Washington.*

<p>H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON, and JOHN M. QUAILE, partners do- ing business as MEYER, WILSON COMPANY,</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">vs.</p> <p>EVERETT PULP & PAPER COM- <i>Defendant.</i> PANY,</p>	}	No. 1641.
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JUDGMENT.

This cause came on regularly for trial on the 8th day of December, 1910, before the Honorable C. H. Hanford, Judge of the United States Circuit Court for the Western District of Washington, at Seattle, Washington, without a jury, a jury having been waived, the plaintiff appearing by its attorneys, Williams, Wood & Linthicum and Isaac D. Hunt, Esq., and the defendant appearing by its attorney, F. H. Brownell, Esq.

And the Court having heard all of the evidence adduced by and on behalf of the plaintiff and by and on behalf of the defendant, and having duly considered the same and filed an opinion herein holding that the plaintiff is entitled to recover nothing from the defendant save and except the amount of money deposited in the registry of this Court by the defendant, and that the defendant recover the taxable costs occasioned by this litigation subsequent to the making of said deposit; and being in all things fully advised in the premises;

It is considered, ordered and adjudged that the plaintiffs take

nothing by this action save and except the money deposited herein by the defendant.

It is further considered, ordered and adjudged that the defendant have and recover of and from the plaintiff its costs and disbursements herein subsequent to the making of said deposit, and which costs are taxed at Two Hundred Thirty-nine 20-100 (\$239.20) Dollars.

And it is further considered, ordered and adjudged that this action be and the same is hereby dismissed with prejudice to another action.

Dated this 27th day of April, 1911.

C. H. HANFORD, Judge.

Indorsed: Judgment. Filed U. S. Circuit Court, Western District of Washington, April 27, 1911. Samuel D. Bridges, Clerk. R. M. Hopkins, Deputy.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

<p>H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON and JOHN M. QUAILE, partners do- ing business as MEYER, WILSON & COMPANY,</p>	}	No. 1641.
vs.		
<p>EVERETT PULP & PAPER COM- PANY,</p>	}	
<i>Plaintiffs.</i>		
<i>Defendant.</i>		

It is now stipulated by and between the above named parties, by and through their respective attorneys, that that certain

shipment of China clay ex Mozambique, now being and lying in the yards of the Everett Pulp & Paper Company, at Everett, Washington, may be sold and delivery made to a purchaser under and for the best terms obtainable, said sale to be made and conducted by the Everett Pulp & Paper Company.

It is the intention of the parties to this stipulation, and it is so understood, that if a sale be made of the said China clay ex Mozambique herein referred to, then the said sale is to be without prejudice to the rights of the plaintiffs herein to prosecute the above entitled suit now pending in the above entitled court for the full amount claimed by them, and is to be without prejudice to the above named defendant in defending the above entitled suit in the above entitled Court; it being agreed and understood by this stipulation that the sale may now be made to minimize the daily accruing loss in value to the said clay, and further that the proceeds of said sale shall be held for the use and benefit of the person or persons entitled thereto upon the final determination of the within named action.

WILLIAMS, WOOD & LINTHICUM and
ISAAC D. HUNT,

Attorneys for Plaintiffs.

F. H. BROWNELL,

Attorney for Defendant.

Indorsed: Stipulation. Filed U. S. Circuit Court, Western District of Washington, May 2, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

*In the Circuit Court of the United States for the Western
District of Washington, Northern Division.*

H. L. E. MEYER, GEORGE H. C.
MEYER, H. L. E. MEYER, JR.,
JOHN WEDDERBURN WILSON
and JOHN M. QUAILE, partners do-
ing business as MEYER, WILSON &
COMPANY,

Plaintiffs,

vs.

EVERETT PULP & PAPER COM-
PANY,

Defendant.

No. 1641.

STIPULATION.

Whereas, the above named plaintiffs have heretofore instituted an action against the above named defendant to recover a certain sum of money alleged to be due from the defendant, and

Whereas, the defendant by its answer admitted that the sum of \$3425.75 is due and did enter said sum into the registry of the above entitled Court for the use and benefit of the plaintiffs, now, therefore,

It is hereby stipulated, by and between H. L. E. Meyer, George H. C. Meyer, H. L. E. Meyer, Jr., John Wedderburn Wilson and John M. Quaile, partners doing business as Meyer, Wilson & Company, the above named plaintiffs, by Williams, Wood & Linthicum and Isaac D. Hunt, their attorneys, and the Everett Pulp & Paper Company, the above named defendant, by and through its attorneys, Francis H. Brownell and J. A. Coleman, that the above named plaintiffs may withdraw from the registry of the above named Court the sum of Three Thousand Four Hundred and Twenty-five Dollars and Seventy-five Cents (\$3425.75) so deposited in the registry of the above

entitled Court by the defendant for the use and benefit of the plaintiffs.

It is further stipulated and agreed that the withdrawal of the said \$3425.75 so deposited in the registry of the court by the defendant for the use and benefit of the plaintiffs, shall not in any way be deemed or taken to affect in any manner whatsoever the plaintiffs' right to appeal the above entitled case to the United States Circuit Court of Appeals, it being the intent of this stipulation that the above named plaintiffs waive none of their rights by withdrawing the said money.

WILLIAMS, WOOD & LINTHICUM,
ISAAC D. HUNT,

Attorneys for Plaintiffs.

FRANCIS H. BROWNELL and
J. A. COLEMAN,

Attorneys for Defendant.

Indorsed: Stipulation. Filed U. S. Circuit Court, Western District of Washington, May 5, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

*In the Circuit Court of the United States, for the Western
District of Washington.*

<p>H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON and JOHN M. QUAILE, partners do- ing business as MEYER-WILSON COMPANY,</p>	}	No. 1641.
<p><i>Plaintiffs,</i></p>		
<p>vs.</p>		
<p>EVERETT PULP & PAPER COM- PANY,</p>	}	
<p><i>Defendant.</i></p>		

BILL OF EXCEPTIONS.

Now come the plaintiffs herein, H. L. E. Meyer, George H. C. Meyer, H. L. E. Meyer, Jr., John Wedderburn Wilson and John M. Quaile, partners doing business as Meyer-Wilson Company, and each of them, by Williams, Wood & Linthicum and Isaac D. Hunt, their attorneys, and severally present this their bill of exceptions as follows :

This cause came on to be heard on the 8th day of December, 1910, before the Honorable C. H. Hanford, Judge of the United States Circuit Court, Western District of Washington, at Seattle, Washington, without a jury, a jury having been waived by all the parties, the plaintiffs appearing by Isaac D. Hunt and the defendant appearing by F. H. Brownell. All parties having announced themselves ready for trial, the following proceedings were had and testimony given :

Mr. Alfred Tucker was called on behalf of the plaintiffs and after being first duly sworn testified, among other things, on direct examination, as follows:

Q I will ask you, Mr. Tucker, whether or not at any time heretofore the Meyer, Wilson Company entered into a contract with the Everett Pulp & Paper Company?

A They did.

Q Were you the one who made the contract on behalf of the plaintiffs?

A Yes.

Q I will ask you to look at this, Mr. Thomas, and state what it is. (Hands witness paper.)

A It is the original contract between the Meyer, Wilson Company and the Everett Pulp & Paper Company.

Q I will ask you if you know whose signature this is (pointing).

A That is my signature.

Q Do you know whose signature this is (indicating)?

A Mr. Augustus Johnson.

Q Who was Mr. Augustus Johnson, if you know?

A I think Mr. Johnson was at that time purchasing agent because it was with him that I was corresponding.

MR. HUNT: I will withdraw the last question as the instrument speaks for itself. Mr. Johnson was secretary of the Company. I will ask that this be marked plaintiffs' exhibit "A."

MR. BROWNELL: I have no objection.

THE COURT: Let it be marked.

(Paper referred to was admitted in evidence and marked plaintiffs' exhibit "A.")

The contract was in words and figures as follows, to-wit:

PLAINTIFFS' EXHIBIT "A."

Original.

Meyer, Wilson & Co.
Portland, Oregon.

Meyer, Wilson & Co.,
San Francisco, Cal.

Wilson, Meyer & Co.,
Liverpool.

0	-----	0
	Received	
	Oct. 17, 1906.	
	Everett Pulp & Paper Co.	
0	-----	0

Portland, Oregon, October 15, 1906.

Messrs. Everett Pulp & Paper Co.,
Everett, Wash.

Bought of MEYER, WILSON & CO.

Terms *Net Cash*.

338 Sherlock Building.

Payable in U. S. Gold Coin
as delivered.

About Three Hundred (300) to Four Hundred (400) tons of 2240 lbs. each, China Clay in casks, P. X. Y. brand at Seventy Cents (70 cts.) per 100 lbs. net invoice weight ex ship at Seattle, Wash.

This sale is made for shipment per "Mozambique" from Leith or Tyne (P. M. W. & Co. A. T.) to Seattle. Purchasers to take delivery of China Clay from alongside vessel at once on discharged at Seattle, Wash.

Sellers not responsible for results (as affecting this agreement) of strikes, accidents, lockouts, breakdown of machinery, failure of manufacturers or suppliers, or any other circumstances beyond their control.

Contract void if vessel be lost, or for any portion or all of the China Clay which may fail to reach Seattle, owing to perils of the Sea, or other causes beyond seller's control.

This sale is based on the present tariff. Any change in the rate of duty payable to the U. S. Government to be for account of purchasers.

China Clay at risk of purchasers as soon as landed.

Wharfage, if any, at Seattle, Wash., to be for account of purchasers.

PR. PRO. MEYER, WILSON & CO.
ALFD. TUCKER,

Approved.

Sellers.

EVERETT PULP & PAPER CO.,
AUGUSTUS JOHNSON, Secretary,

Approved.

Purchasers.

Thereafter Mr. Alfred Tucker, on cross examination, testified, among other things, as follows, to-wit:

Q I show you a letter and ask you if this is a letter which you had written to the defendant (hands witness letter).

A I didn't write that letter.

Q Well the Meyer, Wilson Company wrote it.

A The Meyer, Wilson Company wrote it, yes.

Q Had you seen that letter before?

A Yes.

Q Saw it in the office of the Meyer, Wilson Company prior to its being sent through the mail to the Everett Pulp & Paper Company?

A Yes.

Q It was sent with your approval was it?

A Yes sir.

MR. BROWNELL: We offer the paper in evidence.

MR. HUNT: If the court please, I object to the introduction of this letter as incompetent, irrelevant and immaterial and on the further ground that they are seeking to vary a written evidence by extrinsic evidence. The contract itself is clear, plain and unambiguous on its face and provides for the quality of clay known as P. X. Y. brand. Now they are seeking to introduce other terms into that written contract, which, as I understand the law, is contrary to all rules of evidence. On that ground I desire to base my objection to this testimony and all such testimony as may be offered.

THE COURT: The letter is subsequent to the contract?

MR. BROWNELL: No sir, the letter is prior, leading up to the contract.

THE COURT: Objection overruled.

MR. HUNT: May I have an exception, your Honor?

THE COURT: Exception allowed.

(Document in question is admitted in evidence and marked defendant's exhibit "1.")

Defendant's exhibit "1" is in words and figures as follows, to-wit:

DEFENDANT'S EXHIBIT NO. "1."

Meyer, Wilson & Co.,

Portland, Oregon.

Meyer, Wilson & Co.,

San Francisco, Cal.

Wilson, Meyer & Co.,

Liverpool.

Telegraphic Addresses:

"Meyer," Portland,

"Meyer," San Francisco.

"Rodgers," Liverpool.

o	_____	o
	RECEIVED	
	Oct. 1, 1906.	
	Everett Pulp & Paper Co.	
o	_____	o

o	_____	o
	ANSWERED	
	Oct. 1, 1906.	
	Wm. Howarth.	
o	_____	o

Portland, Oregon,

Sept. 29, 1906.

Saturday.

Messrs. Everett Pulp & Paper Co.,

Everett, Wash.

Dear Sirs:

Referring to the correspondence we had heretofore with you regarding China clay, we now have the pleasure of advising you that we send you under separate cover a sample marked "P. X. Y." of an English China clay, which the makers believe matches your own sample very well, and we trust that you will find it so. It is probable that we could work your order for a

quantity of not less than 400 to 500 tons of this P. X. Y. China clay in one-half ton casks with extra iron hoops, which packages have in our previous shipments proved very satisfactory, indeed, at the price of 76½ cents per 100 lbs. ex ship at Seattle; wharfage, if any, on the goods for buyers account, as usual. Will you kindly let us know whether you are inclined to place an order with us on this basis. We have not a vessel at the present time, but our efforts are towards securing such a ship for Puget Sound. We have actually secured a vessel for the same business for Portland, Oregon, but this, of course, does not help us in any transaction with you. Sailing vessels are somehow becoming scarcer and scarcer for this destination, as owners seem to prefer to send their craft in other directions, therefore, we would suggest that it would be well to place your order with us subject to cable reply in, say a week or even a fortnight, so as to give our Liverpool House a fair chance to work up the business, and in conjunction with the same, the balance of the cargo.

We may say that freights are quite high at present, but they are also very likely to remain so for many months to come, as the demand for building material at San Francisco and also for Valparaiso has the tendency to stiffen the freight market.

One reason why we are approaching you at the present time is that we have other cargo for Puget Sound in sight, and various business has to be worked up in conjunction with the China clay to complete the transaction. We may say, when we report that the casks we use have given satisfaction, that we have a number of shipments delivered here to go by, and we have given this matter of securing a satisfactory package for China clay very considerable attention, so that it has happened repeatedly that we have delivered China clay in excellent order and condition when others received their shipments practically in bulk.

Hoping to hear from you, we are, dear sirs,

Yours very truly,

MEYER, WILSON & CO.

“If you elect to place an offer with us, we shall immediately cable same to our Liverpool House, who will then work on the matter at once and try to bring it to completion as quickly as possible.

M. W. & Co.”

Mr. Tucker, being further examined, on cross examination testified, among other things, as follows:

Q I now show you another package—an envelope which has been sent through the mail. Mr. Tucker, I will ask you if that exterior—I am not speaking now of the inside contents—was the one in which the sample referred to in your letter of September 29th was enclosed?

A I cannot say. Probably.

Q You can't say from the recognition of your handwriting whether it is one of your clerk's or stenographers?

A It is my own handwriting.

Q Well if that is your own handwriting do you know you enclosed in that a sample?

A I don't remember. Probably.

MR. HUNT: What is the date of that?

MR. BROWNELL: That is the same date as the letter. Mailed the same day as the letter. We offer this in evidence.

The plaintiffs thereupon objected to the reception of the same in evidence, which objection was overruled by the Court, to which ruling the plaintiffs then and there excepted, which exception was by the Court allowed.

Mr. Tucker, being further examined, on cross examination testified, among other things, as follows:

MR. BROWNELL: It is agreed between counsel that these carbon copies shall stand in place of the original; this having been signed by Mr. Augustus Johnson.

Q Did you finally get that letter? I will also give you your answer to it.

A Yes sir.

Q In response to that and acknowledging its receipt did you

write that letter or did the Meyer, Wilson Company write that letter (hands witness letter)?

A Yes, I did.

MR. BROWNELL: We now offer in evidence a carbon copy of a letter written from the defendant to the plaintiff under date of October 11th, 1906, it being stipulated between counsel that this carbon copy is a true copy of the original.

Whereupon the plaintiffs objected as before to the introduction of the said letter, which objection was overruled by the Court, to which ruling the plaintiffs then and there duly excepted, which exception was by the Court allowed.

A copy of the said letter, marked defendant's exhibit "3," is in words and figures as follows, to-wit:

(Exhibit omitted through failure of reporter to make copy of the same.)

Immediately following the above testimony Mr. Brownell offered in evidence letters under date of October 15th, written by the plaintiff to the defendant.

The plaintiffs thereupon objected to the letters as before, which objection was overruled by the Court, to which ruling the plaintiffs then and there duly excepted, which exception was by the Court allowed.

Thereafter Augustus Johnson, a witness on behalf of the defendant, after being first duly sworn, testified among other things, on direct examination as follows:

Q Now upon receiving that sample through United States mail what did you do, if anything, with reference to the sample?

A Well, upon receipt of the sample we replied to the Meyer-Wilson Company to the effect that the price was not attractive—

Q No. But I am speaking now of what did you do first with reference to the sample?

A We examined the sample and tested it for its whiteness of color and percentage of grit. We matched it with the clay that had been formerly used and found that the sample would suit our purpose.

Q You say you made this examination. What is the use to

which clay is placed in the paper business and why is it necessary for you to examine the color and percentage of grit?

MR. HUNT: If the Court please I object to that question on the ground that it is irrelevant, incompetent and immaterial. This clay was sold as P. X. Y. brand and was not sold in relation to the works of the plaintiff. It was not sold as paper making clay. The contract speaks for itself, as P. X. Y. brand, and whatever the defendant may have endeavored or wanted to use it for is a matter immaterial to the plaintiff or to its use to be tried in this case.

Which objection was overruled by the Court, to which ruling the plaintiffs then and there duly excepted, which exception was by the Court allowed.

Thereafter Mr. Augustus Johnson testified, among other things, on direct examination, as follows, to-wit:

Q Now after this ship Mozambique arrived and a portion of the clay had been taken to the defendant's works at Everett, state if you please what the defendant did with the clay with reference to its use.

A The clay was landed at our wharf and stored in the yard in our usual clay storing place. We were short of clay. We were anxious for the arrival of the ship and immediately upon receiving a telegram from Mr. Tucker to the effect that the Mozambique had arrived we proceeded to bring the clay to the mill. There were a few broken casks; some broken casks and we started to use that first. It was discovered almost immediately that the color of the paper was down and we started to trace and it was found that it was the clay. Instructions were then given to discontinue the use of that clay. Mr. Tucker was advised and after a great deal of correspondence Mr. Tucker came to the mill.

Q I will now show you a letter dated October 15th, 1907, and ask you if that was a letter which you received from the Meyer, Wilson Company, signed by Mr. Tucker, in regard to this clay at that time. (Hands witness paper.)

A That is the letter.

MR. BROWNELL: We offer the letter in evidence as defendant's exhibit "5."

THE COURT: It may be admitted.

Defendant's exhibit "5" is in words and figures as follows, to-wit:

DEFENDANT'S EXHIBIT NO. "5."

Meyer, Wilson & Co.

Portland, Oregon.

Meyer, Wilson & Co.

San Francisco, Cal.

Wilson, Meyer & Co.

Liverpool.

Telegraphic Addresses:

"Meyer," Portland.

"Meyer," San Francisco.

"Rodgers," Liverpool.

o-----o	
	Everett Pulp & Paper Co.,
	RECEIVED
	Oct. 17, 1907.
	A.M. Ans'd. P.M.
	7-8-9-10-11-12-1-2-3-4-5-6
o-----o	

Portland, Oregon, Oct. 15, 1907.

Messrs. The Everett Pulp & Paper Co.,

Everett, Wash.

Dear Sirs:

The samples of China clay ex "Mozambique" which you forwarded us, we immediately passed on to our San Francisco House and they in turn submitted these samples to experts, and they now report to us on same as follows: "To sum up the whole thing we may state that the China clay shipment ex 'Mozambique' is up to the original sample." In this connection we may tell you that when we sent you the sample of P. X. Y. China clay, upon which you purchased from 300-400 tons, we retained one-half of the sample here, and this we forwarded, with the others from yourselves, to our San Francisco House

so that they and experts have had every opportunity of studying this matter fully.

Regarding the different colors, it is stated that these are readily explained by the different degrees of moisture in the clay, and that when the clay is dried out the sample regains the original color; that samples taken from different parts of the same casks show slight differences in the color is accounted for by the fact that in the parts of the barrel more exposed to moisture the clay is darker, whereas, where less exposed it is lighter. Absolutely no sand has been found in any of the samples of the clay you furnished us, there being a total absence of grittiness, and therefore there can be no extraneous matter. The samples were submitted to a man of very considerable experience in San Francisco in China clays, and after thoroughly examining the samples he stated that there was neither sand nor grit in any of the samples, and further that the clay was all of one color, but that some had absorbed moisture of a more or less degree, which affected the color somewhat, but that it was quite evident to him that the samples were all the same clay and of the same color originally, which undoubtedly it would regain when dried.

You will, of course, recall that we sold you this shipment of clay not to be as per sample, but after submitting you sample of the P. X. Y. brand to show you the general quality of same we sold you 300-400 tons of the P. X. Y. brand. Throughout the world it is the custom, even if one sells as per sample, to sell only about as per sample, for none of these samples can be absolutely guaranteed, as is of course well known to you.

You are of course also aware that you had to take delivery of the China clay from alongside vessel as discharged in Seattle, and that it was your duty to have a representative at the ship to examine the clay and accept or decline the clay there on the wharf where discharged. We never agreed to allow the clay to be transshipped from Seattle to Everett to your works, and there accept or reject. The terms of our contract are very clear on this.

We have been hoping to hear of your Mr. Johnson's return from San Francisco and that he would call upon us when passing through Portland. We presume that he has not yet reached Everett and that we may expect a call from him any time, when we shall of course go over the matter very thoroughly with him, and it is quite possible that the writer may be in Seattle in the near future, when if it be deemed expedient he can run up to Everett.

Yours very truly,
PR. PRO. MEYER, WILSON & CO.,
Alfd. Tucker.

Q How were those casks marked, Mr. Johnson?

A Those casks were marked with a Diamond A, Great Britain.

Q Were they marked with the term P. X. Y?

A No sir.

Q Was there anything on the casks to designate P. X. Y?

A None whatever.

Q What was meant by the term P. X. Y. as used in this correspondence and in the contract which was executed?

A It simply referred to the samples of clay that had been submitted to us as being a sample of that particular brand that they had offered to us. We always buy clay on sample. We must do it. We request a sample and in making a purchase of clay samples are immediately submitted for a test to see if they suit our purposes.

Q Of this shipment what proportion was in accordance with this sample inspected by you as the P. X. Y. brand?

A Well that I can't say, Mr. Brownell, what proportion, because I left the mill in January after that. I went to San Francisco.

Q You then took charge of the San Francisco office?

A Yes sir.

Q And you had no further connection with this particular transaction?

A No.

MR. BROWNELL: That is all.

MR. HUNT: If your Honor please, I wish to move at this time that the testimony of Mr. Johnson from that period where he testifies to the taking of the clay from the dock to Everett, Washington, be stricken from the record because the contract provides that the purchasers are to take delivery of the China clay from alongside the vessel at once when discharged at Seattle, Washington. Mr. Johnson's testimony to the effect that they did take delivery, assuming their ownership and placing it where they desired it shows that they have taken delivery as well as acceptance. Whatever may have been done with the clay after it passed to their ownership and title is immaterial to the issues presented in this case.

Which motion to strike the Court denied, to which ruling the plaintiffs then and there duly excepted, which exception by the Court was then and there allowed.

Thereafter Alex Baillie, a witness on behalf of the defendants, after being first duly sworn, testified, among other things, on direct examination as follows:

Q Are you acquainted with the customs prevailing at the port of Seattle with respect to inspection and delivery and examination of China clay as it arrives on board ship?

MR. HUNT: Just a moment, if your Honor please. Evidently Mr. Baillie is going to testify under the allegations of the complaint that it is the custom and usage in the port of Seattle that China clay is not inspected at the time it is received upon the dock but inspected some other time. Now in the contract which was made between these parties I want to call your Honor's particular attention to this clause of the contract, "Net invoice weight ex ship at Seattle, Washington, purchasers to take delivery of China clay from alongside of vessel at once on discharge at Seattle, Washington." Now they are seeking to introduce evidence to vary that written contract, but the ruling of the Supreme Court, as well as the federal courts and as well as the supreme court of the State

of Washington, hold that evidence of a custom or usage will not be received to explain or vary the terms of a written contract. Neither will such evidence be received when the contract is plain upon its face and the parties have contracted in plain and unambiguous language.

MR. BROWNELL: If your Honor please, the point sought to be brought out by this testimony is in connection with the contract made between these parties as to what is meant by the term delivery.

The COURT: I will overrule the objection.

To which ruling the plaintiffs then and there duly excepted, which exception was then and there duly allowed by the Court.

Thereafter Mr. A. H. P. Jordan, a witness on behalf of the defendants, being first duly sworn, testified among other things on direct examination as follows:

Q Now then, with reference to the trade, the terms of purchase and sale of China clay; by the term "delivery" of China clay in the trade, particularly as the trade takes place here in the City of Seattle and State of Washington—what is meant?

To which question the plaintiffs objected as incompetent, irrelevant and immaterial, which objection was overruled by the Court, to which ruling the plaintiffs then and there duly excepted, which exception was by the Court then and there duly allowed.

Thereafter Mr. A. H. P. Jordan, being further examined, testified on direct examination as follows:

Q What effect would clay containing the percentage of grit like the sample rejected have upon the paper making machine?

A Well, it wears out what is called the cloth on the machine. The shape of paper is formed on an apron of wire, the cost of which is about \$125 or \$130 and a large percentage of grit running in the paper, the wire is endless and travels round and round forming the seat on top—that rapidly wears out this wire which instead of lasting as it should about twenty days it lasts six or eight. It also wears out the rolls on the machine and the wheels and the belts which carry the wet paper.

Q Did I ask you what sort of effect this had in the paper itself, besides increasing the cost of manufacturing?

MR. HUNT: If your Honor please, I object to this line of examination and what effect this clay may have upon the wheels or rolls or what kind of paper is produced. I can't see how it is material to the issues in this case.

Which objection was overruled by the Court, to which ruling the plaintiffs then and there excepted, which exception was then and there duly allowed by the Court.

Thereafter Mr. A. H. P. Jordan, in his re-direct examination, among other things testified as follows:

Q I will show you two photographs and I will ask you if this is a photograph of the place?

A That is the way we store our clay, yes.

Q That is not of this particular shipment, this photograph, is it?

A No, that is what we have now. This is a shipment of clay in the yard.

Q For your own use?

A Yes.

Q It is not the shipment in dispute?

A No.

MR. BROWNELL: We introduce that in evidence.

MR. HUNT: I wish to object to the introduction of that photograph. I see no competency in it. It is a picture of clay in their yard now—a subsequent shipment. I can see no relevancy to the issues of the case from that picture.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly excepted, which exception was then and there duly allowed by the Court.

Thereafter Mr. William Howarth, a witness on behalf of the defendant, being recalled, testified on his direct examination as follows:

Q By the term "delivery" in the trade and in these contracts that are made, what is the usual understanding or what

is the understanding in the trade as compared with acceptance or examination?

To which question the plaintiffs objected, which objection was overruled by the Court, to which ruling the plaintiffs then and there duly excepted, which exception was then and there allowed by the Court.

Thereafter, when the plaintiffs had rested and the defendant had rested and the case was closed as to the giving any further evidence, the plaintiffs then moved the Court for judgment on the pleadings, and also for verdict and judgment upon the case, and in support of said motions the following reasons were assigned:

1. That the defendant had pleaded in its answer and its evidence proved that it had accepted 861 casks of the clay, which conformed to the sample submitted, and that it had rejected 606 casks, which were alleged to be inferior to the said sample. That under the pleadings and the evidence and where a contract for the sale of personal property is entire the defendant will not be allowed to accept performance of a part of said contract and reject performance of another part.

2. That under and by the pleadings the defendant has not counterclaimed for any damages sustained by reason of the alleged breach of warranty and hence none can be allowed to it.

Which motions were overruled by the Court. The plaintiffs then and there duly excepted to the said ruling, which exception was then and there duly allowed by the Court.

Thereafter the Court in its written opinion made a finding of law which is as follows:

“The defendant acted within its legal rights in taking possession of the clay and resisting the plaintiffs’ demand for the price of the portion inferior to the sample. In this country the rule is well established by numerous decisions of the courts that a breach of an implied warranty of quality entitles the vendee to retain the goods and when sued for the purchase price to set up the breach of warranty to reduce the sum recoverable by the vendor. The measure of damages which the vendee may

claim for breach of an implied warranty of quality is the difference between the actual value of the property delivered and the higher value of the warranted quality, and if there is no other evidence of value the price agreed to be paid will be regarded as the value of the property of the quality warranted.

In this case the defendant having offered to return the inferior clay and to hold it subject to disposition by the plaintiffs, the contract price is the measure of damages which it is entitled to recoup."

That said finding is contrary to the evidence, which is as follows:

Mr. W. J. Pilz being recalled on behalf of the plaintiffs, in rebuttal, testified as follows:

Q (By Mr. Hunt) Did you sell a part of the clay remaining in the yard—of the rejected clay?

A I made arrangements to sell it.

Q How much did you sell?

A About nine tons.

Q What was the price which you received?

A Part of the clay I think sold for \$17 a ton of 2000 pounds at the mill. I think one shipment I sold for \$15, as it was a sample shipment for a carload.

Q (By Mr. Brownell): State that in pounds, because the contract is in pounds.

A \$17 would be 85 cents a hundred pounds.

Q 85 cents a pound?

A No, 85 cents a hundred pounds. \$17 a ton.

The finding of the Court was objected to, which objection was overruled by the Court, to which ruling the plaintiffs duly excepted, which exception was duly allowed by the Court.

WILLIAMS, WOOD & LINTHICUM,
ISAAC D. HUNT,

Counsel for Plaintiffs.

United States of America,
Western District of Washington.—ss.

This certifies that on this 7th day of June, 1911, the plaintiffs herein, by Williams, Wood & Linthicum and Isaac D. Hunt, their attorneys, presented to the Court the foregoing eighteen pages of typewritten matter as and for their bill of exceptions in the above entitled case, and the defendants having been duly served with a copy thereof and having made no objection thereto, and the Court having examined the same and being fully satisfied in the premises, the foregoing is allowed and settled as the bill of exceptions for the plaintiffs, and each of them, duly stating those exceptions taken by the plaintiffs to the ruling of the Court during the said trial, together with sufficient of the testimony to explain the same.

C. H. HANFORD, Judge.

Due service of the proposed bill of exceptions accepted this 5th day of June, 1911.

J. A. COLEMAN,
Attorney for Defendant.

Indorsed: Bill of Exceptions. Filed U. S. Circuit Court, Western District of Washington, June 7, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

*In the Circuit Court of the United States, for the Western
District of Washington, Northern Division.*

<p>H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON, and JOHN M. QUAILE, partners do- ing business as MEYER, WILSON & COMPANY,</p>	}	No. 1641.
<i>Plaintiffs,</i>		
vs.		
<p>EVERETT PULP & PAPER COM- PANY,</p>	}	
<i>Defendant.</i>		

H. L. E. Meyer, George H. C. Meyer, H. L. E. Meyer, Jr., John Wedderburn Wilson and John M. Quaile, plaintiffs in the above entitled cause, feeling themselves aggrieved by the judgment of the above entitled court entered the day of April, 1911, come now by Williams, Wood & Linthicum and Isaac D. Hunt, their attorneys, and petition said Court for an order allowing said plaintiffs to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the plaintiffs shall give and furnish upon said writ of error and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

WILLIAMS, WOOD & LINTHICUM,
ISAAC D. HUNT,

Attorneys for Plaintiffs.

*In the Circuit Court of the United States for the Western
District of Washington, Northern Division.*

<p>H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON and JOHN M. QUAILE, partners do- ing business as MEYER, WILSON & COMPANY,</p>	}	No. 1641.
vs.		
<p>EVERETT PULP & PAPER COM- PANY,</p>	}	
<i>Plaintiffs,</i>		
<i>Defendant.</i>		

ASSIGNMENTS OF ERROR.

Come now the plaintiffs and file the within assignments of error upon which they and each of them will rely upon in their prosecution of the writ of error in the above entitled cause.

1.

That the United States Circuit Court in and for the Western District of Washington, Northern Division, erred in overruling the objection of counsel for plaintiffs in error to the introduction of evidence at the trial of said cause of the letter being marked defendant's exhibit No. "1." That the said letter is in words and figures as follows, to-wit:

DEFENDANT'S EXHIBIT NO. "1."

Meyer, Wilson & Co.,
 Portland, Oregon.
 Meyer, Wilson & Co.,
 San Francisco, Cal.
 Wilson, Meyer & Co.,
 Liverpool.

Telegraphic Addresses:
 "Meyer," Portland.
 "Meyer," San Francisco.
 "Rodgers," Liverpool.

o	o	o	o
	RECEIVED		
	Oct. 1, 1906.		
	Everett Pulp & Paper Co.		
o	o	o	o

Portland, Oregon,
 Sept. 29, 1906.

Saturday.

Messrs. Everett Pulp & Paper Co.,
 Everett, Wash.

Dear Sirs:

Referring to the correspondence we had heretofore with you regarding China clay, we now have the pleasure of advising you that we send you under separate cover a sample marked "P. X. Y." of an English China clay, which the makers believe matches your own sample very well, and we trust that you will find it so. It is probable that we could work your order for a quantity of not less than 400 to 500 tons of this P. X. Y. China clay in one-half ton casks with extra iron hoops, which packages have in our previous shipments proved very satisfactory, indeed, at the price of 76½ cents per 100 lbs. ex ship at Seattle; wharfage, if any, on the goods for buyers account, as usual. Will you kindly let us know whether you are inclined to place an order with us on this basis. We have not a vessel at the present time, but our efforts are towards securing such a ship for Puget Sound. We have actually secured a vessel for the same business for Portland, Oregon, but this, of course, does not help

us in any transaction with you. Sailing vessels are somehow becoming scarcer and scarcer for this destination, as owners seem to prefer to send their craft in other directions, therefore, we would suggest that it would be well to place your order with us subject to cable reply in, say a week or even a fortnight, so as to give our Liverpool House a fair chance to work up the business, and in conjunction with the same, the balance of the cargo.

We may say that freights are quite high at present, but they are also very likely to remain so for many months to come, as the demand for building material at San Francisco, and also for Valparaiso has the tendency to stiffen the freight market.

One reason why we are approaching you at the present time is that we have other cargo for Puget Sound in sight, and various business has to be worked up in conjunction with the China clay to complete the transaction. We may say, when we report that the casks we use have given satisfaction, that we have a number of shipments delivered here to go by, and we have given this matter of securing a satisfactory package for China clay very considerable attention, so that it has happened repeatedly that we have delivered China clay in excellent order and condition when others received their shipments practically in bulk.

Hoping to hear from you, we are, dear sires,

Yours very truly,

MEYER, WILSON & CO.

“If you elect to place an offer with us, we shall immediately cable same to our Liverpool House, who will then work on the matter at once and try to bring it to completion as quickly as possible.

M. W. & CO.

2.

That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction of evidence

at the trial of said cause of a sample of clay, the same being marked defendant's exhibit "2."

3.

That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction of evidence at the trial of said cause of a letter written by the defendant to the plaintiff under date of October 11, 1906, said letter being marked defendant's exhibit "3" and is in words and figures as follows, to-wit:

DEFENDANT'S EXHIBIT NO. "3."

October 11-06.

Mr. Alfred Tucker,
c/o P. J. Fransioli & Co.,
Seattle, Wash.

Dear Sir:

Confirming the writer's telephonic communication to you today; please enter our order for 3/400 tons of P. X. Y. China clay, to be fully equal to the sample which you have submitted to us, at the price quoted by you, viz: 70c per 100 lbs., ex ship at Seattle, duty paid.

It is understood that this is to be packed in 5-cwt. casks reinforced with iron hoops, and is for November/December shipment.

Kindly send us your confirmation of this.

This being our initial order with you, we sincerely hope that everything will come out satisfactorily, and that a nice business will result.

Yours truly,

Secretary.

4.

That the said Court erred in overruling the objection of

counsel for plaintiffs in error to the following question asked of the witness, Augustus Johnson :

Q. "You say you made this examination. What is the use to which clay is placed in the paper business and why is it necessary for you to examine the color and percentage of grit?" to which question counsel for plaintiffs in error objected, which objection was overruled by the Court, to which ruling the plaintiff then and there duly excepted, which exception was allowed by the Court. In answer to the question witness responded as follows :

A. "Clay is used as a filler in the paper manufacture in order to close the pores between the fibres. The percentage of grit is the important feature for the reason that if it contains a large percentage of grit it will show up and make the paper spotty; the paper therefore becomes unmerchantable. A printer cannot use it for the reason that it wears out his type.

Q Does it have any effect upon the use for writing paper, upon the pen?

A It does. The pen will scratch. It is very unsatisfactory for that. Further in the case of grit, in clay, it wears out the wires on the paper machines.

Q What effect does the wearing out of the wire have upon increasing the cost to the manufacturer?

A A great deal of effect. Further, it must have a white color in order to produce a white sheet of printing paper."

5.

That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction of evidence at the trial of said cause of a letter dated October 15, 1907, written by the plaintiffs in error to the defendant, which said letter is marked defendant's exhibit "5" and is in words and figures as follows, to-wit :

DEFENDANT'S EXHIBIT NO. "5."

Meyer, Wilson & Co.

Portland, Oregon.

Meyer, Wilson & Co.,

San Francisco, Cal.

Wilson, Meyer & Co.,

Liverpool.

Telegraphic Addresses:

"Meyer," Portland,

"Meyer," San Francisco.

"Rodgers," Liverpool.

o-----o	
	Everett Pulp & Paper Co.,
	RECEIVED
	Oct. 17, 1907.
	A.M. Ans'd. P.M.
	7-8-9-10-11-12-1-2-3-4-5-6.
o-----o	

Portland, Oregon, Oct. 15, 1907.

Messrs. The Everett Pulp & Paper Co.,

Everett, Wash.

Dear Sirs:

The samples of China clay ex "Mozambique" which you forwarded us, we immediately passed on to our San Francisco House and they in turn submitted these samples to experts, and they now report to us on same as follows: "To sum up the whole thing we may state that the China clay shipment ex 'Mozambique' is up to the original sample." In this connection we may tell you that when we sent you the sample of P. X. Y. China clay, upon which you purchased from 300-400 tons, we retained one-half of the sample here, and this we forwarded, with the others from yourselves, to our San Francisco House so that they and experts have had every opportunity of studying this matter fully.

Regarding the different colors, it is stated that these are readily explained by the different degrees of moisture in the clay, and that when the clay is dried out the sample regains the original color; that samples taken from different parts of

the same casks show slight differences in the color is accounted for by the fact that in the parts of the barrel more exposed to moisture the clay is darker, whereas, where less exposed it is lighter. Absolutely no sand has been found in any of the samples of the clay you furnished us, there being a total absence of grittiness, and therefore there can be no extraneous matter. The samples were submitted to a man of very considerable experience in San Francisco in China clays, and after thoroughly examining the samples he stated that there was neither sand nor grit in any of the samples, and further that the clay was all of one color, but that some had absorbed moisture of a more or less degree, which affected the color somewhat, but that it was quite evident to him that the samples were all the same clay and of the same color originally, which undoubtedly it would regain when dried.

You will, of course, recall that we sold you this shipment of clay not to be as per sample, but after submitting you sample of the P. X. Y. brand to show you the general quality of same we sold you 300-400 tons of the P. X. Y. brand. Throughout the world it is the custom, even if one sells as per sample, to sell only about as per sample, for none of these samples can be absolutely guaranteed, as is of course well known to you.

You are of course also aware that you had to take delivery of the China clay from alongside vessel as discharged in Seattle, and that it was your duty to have a representative at the ship to examine the clay and accept or decline the clay there on the wharf where discharged. We never agreed to allow the clay to be transshipped from Seattle to Everett to your works, and there accept or reject. The terms of our contract are very clear on this.

We have been hoping to hear of your Mr. Johnson's return from San Francisco and that he would call upon us when passing through Portland. We presume that he has not yet reached Everett and that we may expect a call from him any time, when we shall of course go over the matter very thoroughly with him, and it is quite possible that the writer may be in Seattle in the

near future, when if it be deemed expedient he can run up to Everett.

Yours very truly,

PR. PRO. MEYER, WILSON & CO.,

Alfd. Tucker.

6.

That the said Court erred in overruling the motion by counsel for plaintiffs in error to strike from the record the following testimony given and offered by Augustus Johnson :

Q Now after this ship Mozambique arrived and a portion of the clay had been taken to the defendant's works at Everett, state if you please what the defendant did with the clay with reference to its use.

A The clay was landed at our wharf and stored in the yard in our usual clay storing place. We were short of clay. We were anxious for the arrival of the ship and immediately upon receiving a telegram from Mr. Tucker to the effect that the Mozambique had arrived we proceeded to bring the clay to the mill. There were a few broken casks; some broken casks and we started to use that first. It was discovered almost immediately that the color of the paper was down and we started to trace and it was found that it was the clay. Instructions were then given to discontinue the use of that clay. Mr. Tucker was advised and after a great deal of correspondence Mr. Tucker came to the mill.

Q I will now show you a letter dated October 15th, 1907, and ask you if that was a letter which you received from the Meyer, Wilson Company, signed by Mr. Tucker, in regard to this clay at that time. (Hands witness paper.)

A That is the letter.

MR. BROWNELL: We offer the letter in evidence as defendant's exhibit "5."

THE COURT: It may be admitted.

Defendant's exhibit "5" is in words and figures as follows, to-wit:

DEFENDANT'S EXHIBIT NO. 5.

Meyer, Wilson & Co.,
 Portland, Oregon.
 Meyer, Wilson & Co.,
 San Francisco, Cal.
 Wilson, Meyer & Co.,
 Liverpool.

Telegraphic Addresses:
 "Meyer," Portland.
 "Meyer, San Francisco.
 "Rodgers," Liverpool.

o-----o	
	Everett Pulp & Paper Co.,
	RECEIVED
	Oct. 17, 1907.
	A.M. Ans'd. P.M.
	7-8-9-10-11-12-1-2-3-4-5-6
o-----o	

Portland, Oregon, Oct. 15, 1907.

Messrs. The Everett Pulp & Paper Co.,
 Everett, Wash.

Dear Sirs:

The samples of China clay ex "Mozambique" which you forwarded us, we immediately passed on to our San Francisco House and they in turn submitted these samples to experts, and they now report to us on same as follows: "To sum up the whole thing we may state that the China clay shipment ex 'Mozambique' is up to the original sample." In this connection we may tell you that when we sent you the sample of P. X. Y. China clay, upon which you purchased from 300-400 tons, we retained one-half of the sample here, and this we forwarded, with the others from yourselves, to our San Francisco House so that they and experts have had every opportunity of studying this matter fully.

Regarding the different colors, it is stated that these are readily explained by the different degrees of moisture in the clay, and that when the clay is dried out the sample regains the original color; that samples taken from different parts of

the same casks show slight differences in the color is accounted for by the fact that in the parts of the barrel more exposed to moisture the clay is darker, whereas, where less exposed it is lighter. Absolutely no sand has been found in any of the samples of the clay you furnished us, there being a total absence of grittiness, and therefore there can be no extraneous matter. The samples were submitted to a man of very considerable experience in San Francisco in China clays, and after thoroughly examining the samples he stated that there was neither sand nor grit in any of the samples, and further that the clay was all of one color, but that some had absorbed moisture of a more or less degree, which affected the color somewhat, but that it was quite evident to him that the samples were all the same clay and of the same color originally, which undoubtedly it would regain when dried.

You will, of course recall that we sold you this shipment of clay not to be as per sample, but after submitting you sample of the P. X. Y. brand to show you the general quality of same we sold you 300-400 tons of the P. X. Y. brand. Throughout the world it is the custom, even if one sells as per sample, to sell only about as per sample, for none of these samples can be absolutely guaranteed, as is of course well known to you.

You are of course also aware that you had to take delivery of the China clay from alongside vessel as discharged in Seattle, and that it was your duty to have a representative at the ship to examine the clay and accept or decline the clay there on the wharf where discharged. We never agreed to allow the clay to be transshipped from Seattle to Everett to your works, and there accept or reject. The terms of our contract are very clear on this.

We have been hoping to hear of your Mr. Johnson's return from San Francisco and that he would call upon us when passing through Portland. We presume that he has not yet reached Everett and that we may expect a call from him any time, when we shall of course go over the matter very thoroughly with him, and it is quite possible that the writer may be in Seattle in the

near future, when if it be deemed expedient he can run up to Everett.

Yours very truly,
PR. PRO. MEYER, WILSON & CO.,
Alfd. Tucker.

Q How were those casks marked, Mr. Johnson?

A Thoses casks were marked with a Diamond A. Great Britain.

Q Were they marked with the term P. X. Y?

A No sir.

Q Was there anything on the casks to designate P. X. Y?

A None whatever.

Q What was meant by the term P. X. Y. as used in this correspondence and in the contract which was executed?

A It simply referred to the samples of clay that had been submitted to us as being a sample of that particular brand that they had offered to us. We always buy clay on sample. We must do it. We request a sample and in making a purchase of clay samples are immediately submitted for a test to see if they suit our purposes.

Q Of this shipment what proportion was in accordance with this sample inspected by you as the P. X. Y. brand?

A Well that I can't say, Mr. Brownell, what proportion, because I left the mill in January after that. I went to San Francisco.

Q You then took charge of the San Francisco office?

A Yes sir.

Q And you had no further connection with this particular transaction?

A No.

MR. BROWNELL: That is all.

Counsel for plaintiffs in error moved the Court to strike the testimony of Mr. Johnson from the record on the ground and for the reason that the contract entered into between the parties and introduced in evidence showed that the clay was to

be taken from alongside the vessel at once upon discharge at Seattle, Washington, the testimony of witness being to the effect that the clay was not to be accepted from place mentioned in said contract and furthermore the testimony of witness showed that it did take delivery at such place, assume ownership and dispose of same according to the defendant's wishes, which evidence of the disposing of the clay after accepting the same was immaterial to any issues presented in this cause. Which motion to strike the Court denied, to which ruling the plaintiffs then and there duly excepted, which exception by the Court was then and there allowed.

7.

That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness, Alex. Baillie:

Q "Are you acquainted with the customs prevailing at the port of Seattle with respect to inspection and delivery and examination of China clay as it arrives on board ship?" which objection was by the Court overruled and an exception duly allowed to the plaintiffs in error to which question in answer thereof the following testimony was given by Alex Baillie:

A "I am."

Q State now if you please what is meant by the term "Delivery ex ship," or alongside ship on the dock at Seattle, as distinguished from examination and inspection of the quality or class, if there is such a distinction, in the trade.

MR. HUNT: If your Honor please I wish it to be understood that my objection goes to this whole line of testimony.

THE COURT: Yes, you can have your exception.

A Well, acceptance of delivery is considered simply the condition of the packages.

Q I beg your pardon?

A The condition of the packages.

Q Well if it is casks what does it mean. By packages you mean casks?

A Yes, or bags or boxes or anything.

Q In the China clay trade, would it be possible to ascertain the character of China clay as to being of a certain brand or not, alongside of the ship?

A I should think not.

Q I call your attention now to defendant's exhibit "1," being the contract in this case in which the words occur, "Net invoice weight ex ship at Seattle, Washington," also, "Purchaser to take delivery of China clay from alongside of vessel at once on discharge at Seattle," and ask you if in the trade the language of that contract would mean that an inspection to determine the class and character of the clay must be made alongside of the ship, or if any inspection should be made alongside of the ship other than to determine whether any of the casks were broken or not?

A I don't see how the quality could be determined alongside ship.

Q In your business would the word "Delivery," used in a contract like that, be held to include an inspection and examination of the class and character of the contents?

MR. HUNT: I object to that question. Mr. Baillie's business may not be pertinent in this case.

Q Well in the trade as you have carried it on; in the China clay trade as you have carried it on?

A No.

8.

That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness, A. H. P. Jordon:

Q "Now then, with reference to the trade, the terms of purchase and sale of China clay; by the term 'delivery' of China clay in the trade, particularly as the trade takes place here in the City of Seattle and State of Washington—what is meant?" which objection of counsel for plaintiffs in error was overruled by the Court and the exception duly allowed; to which question the witness responded as follows:

“A Why the clay that we have bought for delivery—it means the taking of the clay at the ship’s side.

Q Is it possible at the ship’s side to make a test, as to the character and quality of the clay which you have described; commercially possible?

A No.

9.

That the said Court erred in overruling the objection of counsel for plaintiff in error to the following question asked of the witness, A. H. P. Jordon :

Q “What effect would clay containing the percentage of grit like the sample rejected have upon the paper making machine?” which objection the Court overruled, the plaintiffs in error being allowed an exception. The answer of the said witness to the said question is as follows :

A “Well, it wears out what is called the cloth on the machine. The shape of the paper is formed on an apron of wire, the cost of which is about \$125 or \$130 and a large percentage of grit running in the paper, the wire is endless and travels round and round forming the sheet on top—that rapidly wears out this wire which instead of lasting as it should about twenty days it lasts six or eight. It also wears out the rolls on the machine and the wheels and the belts which carry the wet paper.

10.

That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of witness, A. H. P. Jordon :

Q “Did I ask you what sort of effect this had in the paper itself, besides increasing the cost of manufacturing?” which objection said Court overruled and duly allowed the plaintiffs in error an exception; to which question the witness replied :

A “Well this clay we rejected, we simply couldn’t use it in the manufacture of our grade of paper.”

11.

That the said Court erred in overruling the objection of counsel for plaintiffs in error to a photograph of a shipment of clay placed in the storage yard of the defendant, which objection was overruled by the Court and an exception duly allowed the plaintiffs in error.

12.

That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness, William Howarth :

Q “By the term ‘delivery’ in the trade and in these contracts that are made, what is the usual understanding or what is the understanding in the trade as compared with acceptance or examination?” to the overruling of which objection counsel for plaintiffs in error excepted, which exception was duly allowed. In reply to the above question witness replied as follows :

A “My understanding is that any apparent defects which can be discovered at the ship’s side must be complained of at that time so that the rights of the shippers have not been stopped as against the ship, if there has been any apparent damage caused en route. As far as examination of enclosed packages such as clay, where the defects are not latent, and where it needs considerable time and skill to make the examinations, then the goods have always been permitted to go up to the mill, even after the defects have been found, and this is the first instance that we have been advised that we have taken delivery and that we have, by not rejecting the shipment at the ship’s side, accepted the shipment, and we must pay for it whether it contains another thing than what we contracted for.

13.

That the said Court erred in overruling and denying the motion made by counsel for plaintiffs in error at the close of the testimony, for judgment on the pleadings, and also for verdict and judgment upon the case upon the following grounds :

1. That the defendant had pleaded in its answer and its evidence proved that it had accepted 861 casks of the clay, which conformed to the sample submitted, and that it had rejected 606 casks, which were alleged to be inferior to the said sample. That under the pleadings and the evidence and where a contract for the sale of personal property is entire the defendant will not be allowed to accept performance of a part of said contract and reject performance of another part.

2. That under and by the pleadings the defendant has not counterclaimed for any damages sustained by reason of the alleged breach of warranty and hence none can be allowed to it.

14.

That the said Court erred in making the following finding:

“The defendant acted within its legal rights in taking possession of the clay and resisting the plaintiff’s demand for the price of the portion inferior to the sample. In this country the rule is well established by numerous decisions of the courts that a breach of an implied warranty of quality entitles the vendee to retain the goods and when sued for the purchase price to set up the breach of warranty to reduce the sum recoverable by the vendor. The measure of damages which the vendee may claim for breach of an implied warranty of quality is the difference between the actual value of the property delivered and the higher value of the warranted quality, and if there is no other evidence of value the price agreed to be paid will be regarded as the value of the property of the quality warranted.

In this case the defendant having offered to return the inferior clay and to hold it subject to disposition by the plaintiffs, the contract price is the measure of damages which it is entitled to recoup.”

That said finding is contrary to the evidence which is given by Mr. W. J. Pilz and which is as follows:

“Q (By Mr. Hunt): Did you sell a part of the clay remaining in the yard—of the rejected clay?

A I made arrangements to sell it.

Q How much did you sell?

A About nine tons.

Q What was the price which you received?

A Part of the clay I think sold for \$17 a ton of 2000 pounds at the mill. I think one shipment I sold for \$15, as it was a sample shipment for a carload.

Q (By Mr. Brownell): State that in pounds, because the contract is in pounds.

A \$17 would be 85 cents a hundred pounds.

Q 85 cents a pound?

A No, 85 cents a hundred pounds. \$17 a ton.

Wherefore, the plaintiffs in error pray that the judgment of the Circuit Court of the United States for the Western District of Washington, Northern Division, be reversed.

WILLIAMS, WOOD & LINTHICUM,
ISAAC D. HUNT,

Attorneys for Plaintiffs in Error.

Indorsed: Petition for and Assignment of Errors. Filed U. S. Circuit Court, Western District of Washington, June 29, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

*In the Circuit Court of the United States for the Western
District of Washington, Northern Division.*

<p>H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON, and JOHN M. QUAILLE, partners do- ing business as MEYER, WILSON & COMPANY,</p>	}	No. 1641.
<i>Plaintiffs,</i>		
vs.		
<p>EVERETT PULP & PAPER COM- PANY,</p>	}	
<i>Defendant.</i>		

ORDER ALLOWING WRIT OF ERROR.

This 29th day of June, A. D. 1911, came the plaintiffs by their attorney and filed herein and presented to the Court their petition, praying for the allowance of a writ of error, an assignment of errors intended to be urged by them, praying, also, that the transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the writ of error upon the plaintiffs giving bond according to law, in the sum of three hundred (300) dollars which shall operate as a supersedeas bond.

C. H. HANFORD,
Judge of the Above Entitled Court.

Indorsed: Order Allowing Writ of Error. Filed U. S. Circuit Court, Western District of Washington, June 29, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

*In the Circuit Court of the United States for the Western
District of Washington, Northern Division.*

H. L. E. MEYER, GEORGE H. C.
MEYER, H. L. E. MEYER, JR.,
JOHN WEDDERBURN WILSON
and JOHN M. QUAILE, partners do-
ing business as MEYER, WILSON &
COMPANY,

Plaintiffs.

vs.

EVERETT PULP & PAPER COM-
PANY,

Defendant.

No. 1641.

Know All Men by These Presents:

That we, H. L. E. Meyer, George H. C. Meyer, H. L. E. Meyer, Jr., John Wedderburn Wilson and John M. Quaile, partners doing business as Meyer, Wilson & Company, and T. A. Fransioli and Geo. J. Danz, are held and firmly bound unto the Everett Pulp & Paper Company in the sum of Three Hundred Dollars (\$300.00) to be paid to the said Everett Pulp & Paper Company or its assigns. To which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated this 3rd day of June, 1911.

Whereas, the above named H. L. E. Meyer, George H. C. Meyer, H. L. E. Meyer, Jr., John Wedderburn Wilson and John M. Quaile, partners doing business as Meyer, Wilson & Company, have appealed to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the above entitled cause by the Circuit Court of the United States for the Western District of Washington, Northern Division.

Now therefore the condition of this obligation is such that

if the above named H. L. E. Meyer, George H. C. Meyer, H. L. E. Meyer, Jr., John Wedderburn Wilson and John M. Quaile, partners doing business as Meyer, Wilson & Company, shall prosecute said appeal to effect, and answer all costs entered against them, if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

H. L. E. MEYER, GEORGE H. C.
MEYER, H. L. E. MEYER, JR.,
JOHN WEDDERBURN WILSON
and JOHN M. QUAILE, partners
doing business as
MEYER, WILSON & COMPANY,
By ALFRED TUCKER, (Seal)
Manager.
T. A. FRANSIOLI. (Seal)
GEO. J. DANZ. (Seal)

Signed, sealed and delivered in the presence of :

H. E. HANGER.
JOSEPH E. THOMAS.

United States of America,
Western District of Washington, Northern Division.—ss.

I, T. A. Fransioli, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident within said district; that I am worth in property situated therein the sum of Six Hundred Dollars (\$600.00), over and above all my just debts and liabilities, exclusive of property exempt from execution.

T. A. FRANSIOLI.

Subscribed and sworn to before me this 3rd day of June, 1911.

(Notarial Seal Affixed)

JOSEPH E. THOMAS,
Notary Public for Washington.

United States of America,
Western District of Washington, Northern Division.—ss.

I, Geo. J. Danz, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident within said district; that I am worth in property situated therein the sum of Six Hundred Dollars (\$600.00) over and above all my just debts and liabilities, exclusive of property exempt from execution.

GEO. J. DANZ,

Subscribed and sworn to before me this 3rd day of June, 1911.

(Notarial Seal Affixed)

JOSEPH E. THOMAS,
Notary Public for Washington.

Approved June 29, 1911.

C. H. HANFORD, Judge.

Indorsed: Appeal Bond. Filed U. S. Circuit Court, Western District of Washington, June 29, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

*In the United States Circuit Court of Appeals for the Ninth
Judicial District.*

<p>H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON, and JOHN M. QUAILE, partners do- ing business as MEYER, WILSON & COMPANY,</p>	}	No. 1641.
<p><i>Plaintiffs.</i></p>		
<p>vs.</p>		
<p>EVERETT PULP & PAPER COM- PANY,</p>	}	
<p><i>Defendant.</i></p>		

WRIT OF ERROR.

United States of America,
Ninth Judicial Circuit.—ss.

*The President of the United States to the Honorable Judge of
the Circuit Court of the United States for the Western Dis-
trict of Washington, Northern Division, Greeting:*

Because of the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said Circuit Court before you, between H. L. E. Meyer, George H. C. Meyer, H. L. E. Meyer, Jr., John Wedderburn Wilson, and John M. Quaile, partners doing business as Meyer, Wilson & Company, plaintiffs, and Everett Pulp & Paper Company, defendant, a manifest error hath happened, to the great damage of the said H. L. E. Meyer, George H. C. Meyer, H. L. E. Meyer, Jr., John Wedderburn Wilson and John M. Quaile, partners doing business as Meyer, Wilson & Company, plaintiffs, as by their complaint appears, we being willing that error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judg-

ment be there given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Circuit Court of Appeals for the Ninth Circuit together with this writ, so that you have the same at San Francisco in said circuit, on the 28th day of July next in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States this 29th day of June, A. D. 1911, and of the one hundred thirty-fifth year of the independence of the United States of America.

SAM'L D. BRIDGES,

Clerk of the United States Circuit Court for the Western
District of Washington.

(Seal)

B. O. WRIGHT, Deputy.

Allowed by C. H. Hanford, United States District Judge for the Western District of Washington, Northern Division.

We hereby accept due personal service of the within Writ of Error on behalf of Everett Pulp & Paper Company, Defendant in Error, this 6th day of July, 1911.

J. A. COLEMAN,

Attorney for Defendant in Error.

Indorsed: No. 1641. In the United States Circuit Court of Appeals for the Ninth Judicial Circuit. H. L. E. Meyer, George H. C. Meyer, H. L. E. Meyer, Jr., John Wedderburn Wilson and John M. Quaile, partners doing business as Meyer, Wilson & Company, Plaintiffs, vs. Everett Pulp & Paper Company, Defendant. Writ of Error. Filed U. S. Circuit Court, Western District of Washington, July 8, 1911. Sam'l D. Bridges, Clerk. B. O. Wright Deputy. Peters & Powell, Williams, Wood & Linthicum, Attys. for Pltf., 546 N. Y. Blk., Seattle, Wn.

*In the Circuit Court of the United States, for the Western
District of Washington, Northern Division.*

<p>H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON, and JOHN M. QUAIL, partners do- ing business as MEYER, WILSON & COMPANY,</p>	}	No. 1641.
<i>Plaintiffs,</i>		
vs.		
<p>EVERETT PULP & PAPER COM- PANY,</p>	}	
<i>Defendant.</i>		

CITATION ON WRIT OF ERROR.

United States of America,
Western District of Washington, Northern Division.—ss.

*To the Everett Pulp & Paper Company and Francis H. Brownell
and J. A. Coleman, Attorneys for Everett Pulp & Paper
Company, Greeting:*

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, within thirty days from the date hereof pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein H. L. E. Meyer, George H. C. Meyer, H. L. E. Meyer, Jr., John Wedderburn Wilson and John M. Quaile, plaintiffs, are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Seattle in said District this 29th

day of June, in the year of our Lord, one thousand nine hundred and eleven.

(Seal)

C. H. HANFORD, Judge.

Indorsed: Original—No. 1641, In the Circuit Court of the United States, Western District of Washington, Northern Division. H. L. E. Meyer, George H. C. Meyer, H. L. E. Meyer, Jr., John Wedderburn Wilson and John M. Quaile, partners as Meyer, Wilson & Company, Plaintiffs, vs. Everett Pulp & Paper Company, Defendant. Citation on Writ of Error. Filed U. S. Circuit Court Western District of Washington, July 8, 1911. Sam'l D. Bridges, Clerk. D. O. Wright, Deputy. Peters & Powell, Williams, Wood & Linthicum, Attorneys for Plaintiffs, 546-551 New York Building, Seattle, Washington.

Service of within Citation and receipt of copy thereof admitted this 6th day of July, 1911.

J. A. COLEMAN,
Attorney for Defendant.

*In the Circuit Court of the United States for the Western
District of Washington, Northern Division.*

H. L. E. MEYER, GEORGE H. C.
MEYER, H. L. E. MEYER, JR.,
JOHN WEDDERBURN WILSON
and JOHN M. QUAILE, partners
doing business as MEYER, WILSON
& COMPANY,

Plaintiffs,

vs.

EVERETT PULP & PAPER COM-
PANY,

Defendant.

No. 1641.

ORDER EXTENDING TIME ON TRANSCRIPT.

Now on this 12th day of July, 1911, upon application and consent of counsel, and for sufficient cause appearing, it is by me ordered that the time within which the Clerk of this Court shall prepare, certify and transmit to the United States Circuit Court of Appeals for the Ninth Circuit the transcript of the record on appeal in this cause, be and the same is hereby extended to and including the 29th day of August, 1911.

Done in open Court this 12th day of July, 1911.

C. H. HANFORD, Judge.

Indorsed: Order Extending Time on Transcript. Filed U. S. Circuit Court, Western District of Washington, Jul. 12, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

*In the Circuit Court of the United States for the Western
District of Washington, Northern Division.*

<p>H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON and JOHN M. QUAILE, partners doing business as MEYER, WILSON & COMPANY,</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">vs.</p> <p>EVERETT PULP & PAPER COM- PANY,</p> <p style="text-align: right;"><i>Defendant.</i></p>	}	No. 1641.
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PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the above entitled Court:

Please certify and forward to the United States Circuit Court of Appeals for the Ninth Circuit, transcript on writ of error in the above entitled cause as follows:

Praecipe for our appearance.

Complaint.

Praecipe for appearance of defendant's attorneys.

Answer to complaint.

Reply to answer.

Petition for leave to amend reply and affidavit.

Order allowing amended reply to answer.

Amended reply to answer.

Opinion of Judge Hanford.

Judgment.

Stipulation No. 1.

Stipulation No. 2.

Bill of Exceptions.

Order allowing Bill of Exceptions.

Petition for Writ of Error.

Assignments of error.

Order Allowing Writ of Error.

Bond on Writ of Error.

Writ of Error and admission of service thereof.

Citation on Writ of Error and admission of service thereof
and this praecipe.

Order extending time to file transcript.

WILLIAMS, WOOD & LINTHICUM,
PETERS & POWELL,

Attorneys for Plaintiffs.

Indorsed: Praecipe for Transcript of Record. Filed U. S.
Circuit Court, Western Division of Washington, June 14, 1911.
Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

*In the Circuit Court of the United States for the Western
District of Washington, Northern Division.*

<p>H. L. E. MEYER, GEORGE H. C. MEYER, H. L. E. MEYER, JR., JOHN WEDDERBURN WILSON AND JOHN M. QUAILE, partners doing business as MEYER, WILSON & COMPANY,</p>	}	No. 1641.
<p><i>Plaintiffs in Error.</i></p>		
<p>vs.</p>		
<p>EVERETT PULP & PAPER COM- PANY,</p>	}	
<p><i>Defendant in Error.</i></p>		

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington.—ss.

I, SAM'L D. BRIDGES, Clerk of the Circuit Court of the United States, for the Western District of Washington, do hereby certify the foregoing 78 printed pages, numbered from 1 to 78, inclusive, to be a full, true and correct copy of so much of the record and proceedings in the above and foregoing entitled cause, as is called for by precept of Attorneys for Plaintiffs in Error, as the same remain of record and on file in the office of the Clerk of said Court, and that the same constitute the return to the annexed Writ of Error.

I further certify that I annex hereto and herewith transmit the Original Writ of Error and Citation.

I further certify that the cost of preparing and certifying the foregoing return to Writ of Error is the sum of \$106.45.

and that the said sum has been paid to me by Messrs. Williams, Wood & Linthicum, Attorneys for Plaintiffs in Error,

In testimony whereof I have hereunto set my hand and affixed the seal of said Circuit Court, at Seattle, in said District, this 16th day of August, A. D. 1911.

SAMPL D. BRIDGES, Clerk.

By B. O. WRIGHT,

Deputy Clerk.